IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Jack Wolf,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. No. 04-1385-GMS
	)	
Thomas Carroll, DCC Medical Dept., C/O Pusey, C/O Carter, and Lt. Seacord,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL IMMEDIATE PAYMENT OF FULL FILING FEES AND FOR RELATED RELIEF

Plaintiff is an inmate in the custody of the Delaware Department of Correction at the Delaware Correctional Center near Smyrna, Delaware. The instant case is merely one in a series of frivolous legal actions which he has filed. Defendants Carter, Pusey and Seacord submit that plaintiff's history of abusing the judicial process brings him within the provisions of 28 U.S.C. §1915(g), the "three strikes" provision of the Prison Litigation Reform Act, and that he must therefore immediately pay the full fees normally due upon commencement of a case in this Court.

I. FACTS

Plaintiff is an incessant but consistently unsuccessful *pro se* litigant. In addition to the instant civil rights action, he has filed at least six unsuccessful civil actions in federal court which have been found to fail as a matter of law. On November 22, 2004, this Court granted Wolf's application to proceed *in forma pauperis*. ***Wolf v. Carroll, et al,*** **C.A. No. 04-1385-GMS.** Notwithstanding Wolf's IFP status, he has filed at least three civil actions in the past, while incarcerated, that were dismissed as frivolous, or for failure to state a claim upon which relief may be granted. ***Wolf v. Laferty*, *et al.*, C.A. No. 00-374-JJF**; ***Wolf v. Funk*, C.A. No. 00-427-JJF; *Wolf v. Windslow*, *et al..*, C.A. No. 00-428-JJF; *Wolf v. County Police*, C.A. No. 00-429-JJF; *Wolf v. Williams, et al..*, C.A. No. 00-433-JJF; *Wolf v. Gander Hill Prison*, C.A. No. 00-618-JJF** are prior cases dismissed as frivolous or for failure to state a claim upon which relief may be granted. Therefore, collectively they count towards the "three strike rule" to prevent Wolf from filing another civil action *in forma pauperis* while incarcerated unless he demonstrates that he is in "imminent danger." The Defendants urge that Wolf's complaint does not meet the "imminent danger" exception to § 1915 (g).

On November 22, 2004, this Court, presumably being unaware of the plaintiff's litigation history, granted him permission to pursue this case *in forma pauperis* pursuant to 28 U.S.C. §1915 ("§1915(g)").

II. LAW AND ARGUMENT

The "three strikes" provision of the Prison Litigation Reform Act, §1915(g), provides that "in no event" shall a prisoner be permitted to proceed under §1915 if he has pursued three or more actions or appeals in federal courts which were dismissed on grounds that they were frivolous, malicious, or failed to state a claim upon which relief could be granted. Section 1915(g) is mandatory and Mr. Wolf clearly falls within its terms. Mr. Wolf exceeds the statutory criteria and hence has "struck out."

Essentially, this Court has determined that the civil action cases listed above count toward the "three strikes" rule when it dismissed the cases as frivolous or malicious, or for failure to state a claim upon which relief may be granted. Therefore, there can be no question as to §1915(g)'s applicability to the case at bar. Moreover, Wolf did not demonstrate that at the time he filed the complaint he was in imminent danger. *See Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir.2001).

Because Wolf, who is covered by § 1915 (g), brought this case without prepaying all appropriate fees, the case must be dismissed. Payment of all fees, or a proper grant of *in forma pauperis* status, is a precondition to litigation. *Sloan v. Lesza*, 181 F.3d 857, 858 (7th Cir. 1999).

WHEREFORE, defendants Carter, Pusey and Seacord submit that Mr. Wolf should be compelled to pay in full immediately all fees due upon commencing a case in this Court or face dismissal.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

___/s/ Ophelia M. Waters___________

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Dated: August 7, 2006

CERTIFICATE OF MAILING AND/OR DELIVERY

The undersigned certifies that on August 7, 2006, she caused the attached *Defendants' Motion to Compel Payment of Filing Fees/Vacate IFP Order and Memorandum in Support of the Motion* to be delivered to the following person(s) in the form and manner indicated:

NAME AND ADDRESS OF RECIPIENT(S):

Inmate Jack W. Wolf
S.B.I. No. 00093532
Delaware Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

MANNER OF DELIVERY:

____ One true copy by facsimile transmission to each recipient

__X__ Two true copies by first class mail, postage prepaid, to each recipient.

____ Two true copies by Federal Express

____ Two true copies by hand delivery to each recipient.

/s/ Ophelia M. Waters______
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